



1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the  
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final  
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law  
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
10 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity  
11 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses  
12 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to  
13 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),  
14 any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
16 made by a court reporter. The transcription of the hearing proceedings by the court reporter shall be  
17 the official record for purposes of the Administrative Law Judge's Recommended Decision and the  
18 Superintendent's Final Decision and Order. Any party that requests a transcript of the proceedings  
19 shall pay the cost of the transcript for the court reporter or other transcriber.

20 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
21 Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona  
22 85007.

### 23 NOTICE OF APPLICABLE RULES

24 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
25 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
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1 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
2 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
3 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through R2-  
4 19-122. A copy of the procedures to be followed is enclosed.

5 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer within **twenty (20)**  
6 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's  
7 position or defense and shall specifically admit or deny each of the assertions contained in this  
8 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain  
9 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall  
10 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.  
11 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an  
12 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.  
13 Any defense not raised in the answer is deemed waived.

14 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**  
15 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
16 true and admitted and the Superintendent may take whatever action is appropriate pursuant to A.R.S.  
17 §§ 6-123, 6-131 and 6-161(B).

18 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial  
19 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
20 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
21 Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection &  
22 Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

23 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
24 **alternative formats, or assistance with physical accessibility.** Requests for special  
25 accommodations must be made as early as possible to allow time to arrange the accommodations. If  
26 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

**COMPLAINT**

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2           1.       Respondent Griselda “Gracie” Cardenas aka Griselda Cardenas-Pena (“Ms.  
3 Cardenas”) was employed as an escrow officer for the Talon Group (“Talon”) from approximately  
4 October 20, 2003 to October 25, 2007.

5           2.       Talon is a division of First American Title Insurance Company (“First American”)  
6 licensed by the Department as an escrow agent, license number EA-0014663.

7           3.       Prior to her employment with Talon, on or about May 1, 2001, in *State of Arizona v.*  
8 *Griselda Cardenas*, Yuma County Superior Court of Arizona, No. S1400CR200100072, a Sentence  
9 of Probation was filed against Ms. Cardenas for crimes she committed from July through October,  
10 1999. The Judge found Ms. Cardenas guilty of Theft, a Class 5 Felony, in violation of A.R.S. §§ 13-  
11 1802(a)(4), 13-1802, 13-1801, 13-701, 13-801, and 13-901. The Judge placed Ms. Cardenas on  
12 supervised probation for 48 months commencing May 1, 2001. Ms. Cardenas was ordered to pay  
13 restitution of \$10,232.60; pay a probation fee of \$40.00 per month; a time payment fee of \$20.00;  
14 and a Superior Court Enhancement Fee of \$10.00.

15           4.       On or around October 26, 2007, Talon initiated an internal audit involving Ms.  
16 Cardenas’ escrow files.

17           5.       Talon discovered a defalcation when a customer called regarding the status of a debt  
18 payoff that had not been made. Upon further inquiry, it was determined that Ms. Cardenas took  
19 money from escrow files for her own benefit via direct payment to her bank account or to family  
20 members and third parties. Ms. Cardenas wrongfully diverted escrow funds.

21           6.       On November 28, 2008, a Direct Complaint was filed against Ms. Cardenas in *State*  
22 *of Arizona v. Griselda Cardenas-Pena, aka Griselda P. Cardenas, et al.*, Maricopa County Superior  
23 Court No. CR2008-173446-002SE, charging Ms. Cardenas with one count of Theft, a Class 2  
24 Felony, in violation of A.R.S. §§ 13-1801, 13-1802, 13-701, 13-702, 13-702.01 and 13-801. The  
25 Complaint charged that between April 6, 2007 and October 25, 2007, Ms. Cardenas knowingly  
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1 controlled funds from First American of a value of \$25,000.00 or more but less than \$100,000.00  
2 with the intent to deprive First American of such property.

3 7. On or about March 6, 2009, Ms. Cardenas pled guilty to one amended count of Theft,  
4 a Class 5 Felony, in violation of A.R.S. §§ 13-1802, 13-1802(A)(1), 13-1801, 13-610, 13-701, 13-  
5 702, 13-702.01, and 13-801.

6 8. On or about April 24, 2009 the Court adjudged Ms. Cardenas guilty of Theft, a Class  
7 5 Felony, and sentenced Ms. Cardenas to a term of imprisonment and committed her to the Arizona  
8 Department of Corrections for 1.5 years beginning on April 24, 2009, followed by community  
9 supervision. Ms. Cardenas was also ordered to pay restitution of \$35,454.90 and submit to DNA  
10 testing and to pay applicable testing fees.

11 9. Ms. Cardenas is presently incarcerated at the Arizona State Prison Complex –  
12 Perryville in Goodyear, Arizona. She is scheduled for supervised release on August 6, 2010, with  
13 the supervised release ending on October 6, 2010.

#### 14 LAW

15 1. Pursuant to Title 6, Chapter 7, of the Arizona Revised Statutes, the Superintendent  
16 has the authority and duty to regulate all persons engaged in the escrow agent business and with the  
17 enforcement of statutes, rules, and regulations relating to escrow agents.

18 2. By the conduct set forth above in the Complaint, Ms. Cardenas has violated statutes  
19 governing escrow agents as follows:

20 a. A.R.S. § 6-834(A) by failing to deposit and maintain all monies deposited in escrow  
21 to be delivered on the close of the escrow or on any other contingency in a bank,  
22 savings bank or savings and loan association doing business in this state and failing to  
23 keep all escrow monies separate, distinct and apart from monies belonging to the  
24 escrow agent; and

25 b. A.R.S. § 6-841.01(A) by breaching a fiduciary duty as a trustee to the owner of all  
26 monies received or collected and held in escrow and by knowingly and negligently

1           commingling trust monies with the escrow agent's own monies or with monies held  
2           in any other capacity.

3           3.       Mrs. Cardenas' conduct, as set forth above, constitutes acts, omissions, and practices  
4           which demonstrate personal dishonesty and unfitness to continue in office or to participate in the  
5           conduct of the affairs of any financial institution or enterprise and is grounds for removal and the  
6           prohibition of Ms. Cardenas within the meaning of A.R.S. § 6-161(A)(1).

7           4.       Ms. Cardenas' May 1, 2001, conviction of one (1) count of Theft, a Class 5 Felony,  
8           and her April 24, 2009, conviction of one (1) count of Theft, a Class 5 Felony, constitute grounds for  
9           the removal and the prohibition of Ms. Cardenas from participating in any manner in the conduct of  
10          the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-161(A)(4).

11          5.       Ms. Cardenas' violations of A.R.S. §§ 6-834(A) and 6-841.01(A) constitute grounds  
12          for the removal and the prohibition of Ms. Cardenas from participating in any manner in the conduct  
13          of the affairs of any financial institution or enterprise, pursuant to A.R.S. § 6-161(A)(6).

14          6.       The violations, set forth above, constitute grounds for the Superintendent to order the  
15          removal and the prohibition of Ms. Cardenas from further participation in any manner as a director,  
16          officer, employee, agent or other person in the conduct of the affairs of any financial institution or  
17          enterprise, pursuant to A.R.S. §6-161(E).

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WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the above-described violations, the Superintendent may remove and prohibit Ms. Cardenas from further participation in any manner in the conduct of the affairs of any financial institution or enterprise pursuant to A.R.S. § 6-161(E) and may order any other remedy necessary or proper for the enforcement of the statutes and rules regulating escrow agents in Arizona pursuant to A.R.S. §§ 6-123, 6-131 and 6-161.

DATED this 23<sup>rd</sup> day of February, 2010.

Thomas L. Wood  
Acting Superintendent of Financial Institutions

By

Robert D. Charlton  
Assistant Superintendent of Financial Institutions

ORIGINAL of the foregoing filed this 23<sup>rd</sup> day of February, 2010, in the office of:

Thomas L. Wood  
Acting Superintendent of Financial Institutions  
Arizona Department of Financial Institutions  
ATTN: Susan Longo  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

COPY mailed/delivered same date to:

Lewis D. Kowal, Administrative Law Judge  
Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, AZ 85007

Erin O. Gallagher  
Assistant Attorney General  
Office of the Attorney General  
1275 West Washington  
Phoenix, AZ 85007

1 Robert D. Charlton, Assistant Superintendent  
2 Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

3 COPY DELIVERED/SERVED SAME DATE by  
4 PROCESS SERVER, to:

5 Griselda "Gracie" Cardenas aka  
6 Griselda Cardenas-Pena  
7 No. 241801  
8 ASPC – Perryville  
2014 N. Citrus Road  
Goodyear, AZ 85395  
Respondent

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10 By: *Susan Lingo*

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